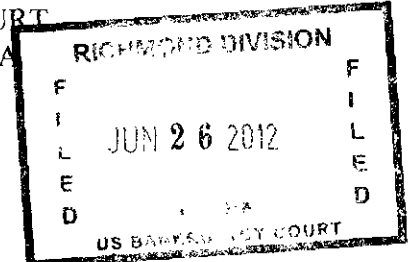


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION



In re: x  
CIRCUIT CITY STORES, INC., et al., . Chapter 11  
Debtors. . Case No 08-35653 (KRH)  
x Jointly Administered

**RESPONSE TO LIQUIDATING TRUST'S FORTY-THIRD OMNIBUS OBJECTION TO  
LANDLORD CLAIM AND CONTRACTOR CLAIMS (REDUCTION OF CERTAIN  
PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN  
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID CLAIMS,  
DISALLOWANCE OF CERTAIN LATE FILED CLAIMS, AND DISALLOWANCE OF  
CERTAIN AMENDED CLAIMS.)**

Berkadia Commercial Mortgage, LLC, ("Berkadia") successor-in- interest to Capmark Finance, Inc. on behalf of Bank of America National Association as Successor by Merger to LaSalle Bank National Association fka LaSalle National (the "Claimholder"), by and through its counsel Bryan Cave LLP, hereby files this Response to Liquidating Trust's Forty-Third Omnibus Objection to Landlord and Contractor Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claim, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims)(the "Objection"), and states as follows:

1. The Bankruptcy Trustee has objected to the proof of claim number 9449 (the "Claim") filed by Claimholder alleging that the Claim should be reduced by \$19,444.35 for overpaid real estate taxes.

2. The Bankruptcy Trustee offers not support for its argument that the Claim is subject to a reduction.



2. Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that a “proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. Fed. R. Bankr P. 3001(f).

3. After a creditor has timely and properly filed a proof of claim, the Debtor must produce substantial evidence to rebut this prima facie evidence. See in re Hemingway Transp. Inc. 993 F.2d 915, 925 (1<sup>st</sup> Cir. 1993) (“The interposition of an objection does not deprive the proof of claim of presumptive validity unless the objection is supported by substantial evidence”); In re Harford Sands, Inc. 372 F.3d 637,640-41 (4<sup>th</sup> Cir. 2004) (Creditor's filing of proof of claim constitutes prima facie evidence of amount and validity of claim, and burden is on debtor to object to claim and to introduce evidence to rebut its presumptive validity); In re Gran, 964 F.2d 882, 827 (8<sup>th</sup> Cir. 1992) (“The objection party must then produce evidence rebutting the claimant or else the claimant will prevail.”)

4. In this case, the Claims were filed prior to the Bar Date and in accordance with the Federal Rules of Bankruptcy Procedure and provides sufficient documentary support for the Claims and the calculation of the Claims amounts. The Objection does not challenge the basis for the Claims or provide any evidence whatsoever to supports its objection to the calculation of the Claims amounts.

5. The Bankruptcy Trustee bears the burden of proof for the disallowance of any portion of the Claims. See In re Woodmere Investors Ltd. Partnership, 178 B.R. 346, 354 (Bankr. S.D.N.Y 1995) Because the Bankruptcy Trustee has produced no evidence whatsoever in support of the proposed reduction, the Bankruptcy Trustee has failed to meet its burden of proof.

WHEREFORE, Claimholder respectfully requests that the Court (a) overrule the Objection as it relates to the Claim; (b) allow the Claim as provided in Claimholder’s proof of



claim; and (c) grant Claimholder such other and further relief as this Court deems appropriate under the circumstances.

Dated: June 24, 2012

BRYAN CAVE LLP

By:/s/ Keitha M. Wright

Keith M. Aurzada  
State Bar No. 24009880  
Keitha M. Wright  
State Bar No. 24075310  
2200 Ross Avenue, Suite 3300  
Dallas, Texas 75201  
(214) 468-3800 (Phone)  
(214) 468-3888 (Fax)

Attorney for Claimholder

**CERTIFICATE OF SERVICE**

The undersigned hereby states that on the 24<sup>th</sup> day of June, 2012, a true and correct copy of the above foregoing instrument was sent to:

Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
701 East Broad Street-Room 4000  
Richmond, VA 23219

Jeffrey N. Pomerantz, Esq.  
Andrew W. Caine, Esq.  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd.  
Los Angeles, California 90067-4100  
Telephone (310) 277-6910  
Telecopy (310) 201-0760

Lynn L. Tavenner, Esq.



Paula D. Beran, Esq.  
Tavenner & Beran, PLC  
20 North Eighth Street, 2<sup>nd</sup> Floor  
Richmond, Virginia 23219  
Telephone (804) 783-8300  
Telecopy: (804) 783-0178

/s/ Keitha M. Wright  
Keitha M. Wright